

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**TIMOTHY MALONE**



**PLAINTIFF**

**V.**

**Civil No. 1:16cv390-HSO-JCG**

**KENNITH DONALD and ALLSTATE  
VEHICLE AND PROPERTY  
INSURANCE COMPANY**

## DEFENDANTS

## ORDER OF REMAND

This matter is before the Court sua sponte to consider its subject matter jurisdiction. Having considered the record and relevant legal authority, the Court is of the opinion that this case should be remanded to the Circuit Court of Harrison County, Mississippi, First Judicial District.

Plaintiff Timothy Malone initiated this action by filing a Complaint [1-1] on August 31, 2016, in the Circuit Court of Harrison County, Mississippi, First Judicial District, naming as Defendants Kenneth Donald (“Mr. Donald”), and Allstate Vehicle and Property Insurance Company (“Allstate”). The Complaint advances state-law claims against Defendants. Compl. [1-1] at 7-9.

On October 26, 2016, Allstate removed the present case to this Court, ostensibly invoking diversity jurisdiction pursuant to 28 U.S.C. § 1332. Notice of Removal [1] at 1-2. Although Plaintiff and Mr. Donald are both Mississippi citizens, Allstate asserted in the Notice of Removal that Mr. Donald's citizenship

“should be disregarded because the claim against him is fraudulently misjoined with the claim against Allstate.” *Id.* at 2; *see Cartwright v. State Farm Mut. Auto. Ins. Co.*, No. 4:14-CV-00057-GHD, 2014 WL 6959045, at \*6 (N.D. Miss. Dec. 8, 2014) (“Fraudulent misjoinder of defendants is not permissible to circumvent diversity jurisdiction.”).

Plaintiff’s claims against Allstate have now been dismissed upon the Joint Motion to Dismiss [12] filed by Plaintiff and Allstate. The remaining parties to this action, Plaintiff and Mr. Donald, are both citizens of Mississippi. *See* Compl. [1-1] at 6. The Court therefore lacks subject matter jurisdiction. *See* 28 U.S.C. § 1332(a). Remand is required. *See* 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”).

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that, this civil action is remanded to the Circuit Court of Harrison County, Mississippi, First Judicial District, and that a certified copy of this Order of remand shall be immediately mailed by the Clerk to the clerk of the state court pursuant to 28 U.S.C. § 1447(c).

**SO ORDERED AND ADJUDGED** this 13<sup>th</sup> day of December, 2016.

*s/ Halil Suleyman Ozerden*  
HALIL SULEYMAN OZERDEN  
UNITED STATES DISTRICT JUDGE